IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

COMPANY PETITION No 75 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

GALBO GRAPHICS

Versus

MONICA KIDS WEAR PVT. LTD.

Appearance:

1. COMPANY PETITION No. 75 of 2001

MS SD RAMI for Petitioner No. 1

NOTICE SERVED for Respondent No. 1

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 21/02/2002

ORAL JUDGEMENT

This is a petition under Sections 433 and 434 of the Companies Act, 1956 (hereinafter referred to as `the Act') for winding up Monica Kids Wear Pvt. Ltd. (hereinafter referred to as `the respondent-Company').

2. It is the case of the petitioner in this petition that the respondent-Company was carrying on the business of making garments. In April, 1999, the respondent-Company had approached the petitioner for stationery and printing requirements and placed orders with the petitioner from time to time. The petitioner had accordingly supplied the required items as per the instructions of the respondent-Company. The outstanding amount due from the respondent-Company to the petitioner was Rs.42,678/- as on 11.5.2000. Inspite of several demands, the respondent-Company did not make the payment. Therefore, the petitioner served the respondent-Company with statutory notice dated 24.2.2001 (Annexure "B") demanding the aforesaid amount with running interest at the rate of 24% p.a. The respondent-Company neither complied with the statutory notice dated 24.2.2001 (Annexure "B") demanding the aforesaid amount with running interest at the rate of 24% p.a. nor replied to the notice. Hence, the present petition came to be filed.

3. It appears that even at the admission stage none appeared for the respondent-Company even though it was served. Thereafter, this Court admitted the petition vide order dated 25.10.2001, but the direction for publication of the advertisement was deferred, which direction was ultimately given by this Court on 12.12.2001. The affidavit dated 11.1.2002 is filed by the learned advocate for the petitioner stating that the notices of admission of the petition have been published in Sambhav (Gujarati) and Indian Express (English), Ahmedabad edition on 6.1.2002. The returnable date was fixed as 24.1.2002 as per the order dated 12.12.2001. Inspite of the fact that the Court has waited from 24.1.2002 onwards by granting adjournments on that day and again on 30.1.2002, none appears for the respondent-Company even today. Hence, the Court is left with no alternative but to proceed with the final hearing of the petition.

4. In view of uncontroverted averments made in the petition that the petitioner had provided goods and materials worth Rs.42,678/- to the respondent-Company on 11.5.2000 and that the respondent-Company has neither paid the said amount nor complied with the statutory notice dated 24.2.2001 nor has the respondent-Company cared to appear before this Court, the Court proceeds on the footing that the respondent-Company is unable to pay its debts.

The learned advocate for the petitioner further

states that the respondent-Company has stopped carrying on its business.

This is also one more additional ground for exercising the powers of the Court under Section 433 of the Act.

5. Hence, Monica Kids Wear Pvt. Ltd. is ordered to be wound up. The Official Liquidator attached to this Court is appointed as the Official Liquidator for winding up the respondent-Company in accordance with the provisions of the Act. The Official Liquidator shall exercise all the powers and discharge the duties under the Act. The Official Liquidator shall take over possession and custody of all the assets, moveable and immoveable, and books of account of the respondent-Company and make inventory thereof by 31.3.2002.

6. The petition is accordingly allowed and stands disposed of.

(M.S. Shah, J.)

sundar/-